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| 5568 | 7590 | 12/01/2005 | EXAMINER | |
| JACK PAAVILA | | | DEVOTI, PAUL D | |
| BOX 1151 | | | ART UNIT | |
| ALEXANDRIA, KOC IA0 | | | PAPER NUMBER | |
| CANADA | | | 3637 | |

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/802,337 | Applicant(s) VALENTINI, MICHEL | |
| | Examiner Paul Devoti | Art Unit 3637 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03/18/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

✓

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the perforated panel as cited in Claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to because in Figure 2, item 53 does not reference the same item as in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The "support wall" in Claim 12, line 2, is not properly described in the specification.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the applicant is claiming a gutter cover or a gutter cover in combination with a gutter. If the applicant intends to claim only the gutter cover, all recitation of the combination must be removed. If the applicant intends to claim the combination, the preamble of the claims should be amended to be consistent with the language in the body of the claims. For the purposes of examination, the "gutter cover" subcombination will be considered on its own. Any reference to the gutter cover in combination with a gutter will not be given any patentable weight.

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7. Claim 1 recites the limitation "upper lip" in line 5. There is insufficient antecedent basis for this limitation in the claim. Regarding claim 1, "upper lip" is referred to as "outer lip" (23) in paragraph 1016 of the specification.

8. Claim 1 recites the limitation "the lip of an installed gutter" in lines 8 and 9. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 2 ends with a semicolon, therefore indicating an incomplete claim. It must end with a period.

10. Claims 5, 6, 7, 13, and 14 begin with a preamble reciting "a gutter", instead of "a gutter cover". The examiner is unsure whether the applicant intends to claim a combination of a gutter cover and gutter in these claims, or if the applicant means to claim a gutter cover.

Claim Rejections - 35 USC § 102

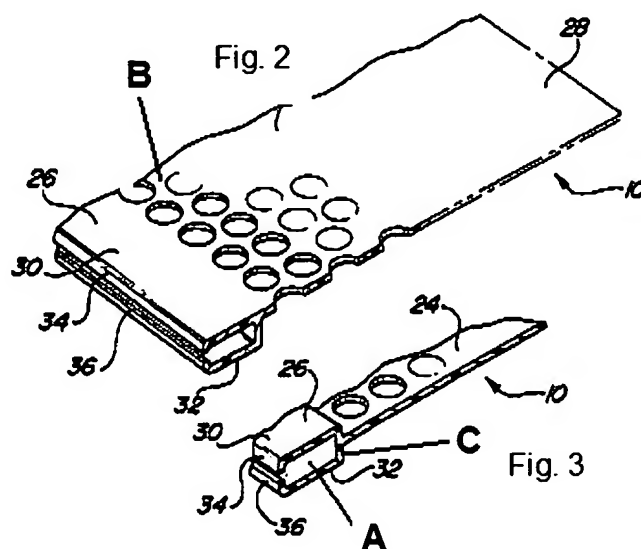
11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Sweers (US Patent Number 5555680).

13. Sweers discloses in Figures 1 and 2 a gutter cover that has an elongated main section (24) with an outer side section (26). Additionally, he discloses perforations (B) in the main section (24). Sweers teaches that the outer side section has a channel (A) that opens away from the main section (24), which can fit over the lip (22) of a gutter. Sweers also discloses a gripping surface on the outer side section that extends upwardly, which is formed from the end wall (C) and top section (30) of the channel. The end wall (C) and upper edge (30) of the U-shaped channel inherently form a gripping surface, facing away from the channel opening, to pull the channel over the lip of a gutter. Regarding claim 8, Sweers discloses a channel defined by a top wall (30), bottom wall (32), and end wall (C) that join the top and bottom walls.



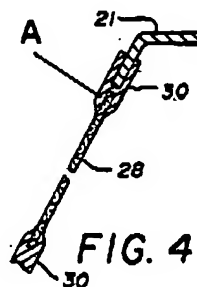
Sweers (US Patent Number 5555680) Figures 2 and 3

Claim Rejections – 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sweers in view of Hileman (US Patent Number 4592174). Sweers discloses the claimed invention, except for an inner side section with a defining slot that opens away from the main section that has a flexible flap mounted in the slot extending away from the main section. Hileman, however, teaches a slot (A) that opens away from the main section (21). This slot (A) holds a flexible flap (28) that extends away from the main section. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Sweers' gutter cover to include an inner side section with a defining slot that holds a flexible flap extending away from the main section, as taught by Hileman to provide a secure way to attach the gutter cover to another member.



Hileman (US Patent Number 4592174) Figure 4

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16. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweers. Sweers discloses the claimed invention except for painting the gutter cover with aluminum and coating it with polyester. It would have been obvious to one having ordinary skill in the art at the time the invention was made to paint the gutter cover with aluminum and coat it with polyester, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

17. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sweers in view of Hileman. Sweers, in view of Hileman, teaches everything previously disclosed, including the channel (A) of the outer side section (26) defined by an end wall (C) joining the top wall (30) and bottom wall (32).

18. Claims 4, 5, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweers in view of Hileman as applied to claim 3 above, and further in view of Albracht (US 6701674). Sweers in view of Hileman teaches everything previously disclosed, but fails to teach that the bottom wall of the channel is aligned with the panel and the surface of the end wall adjacent the panel forms the gripping surface (claim 4), that the bottom wall is shorter than the end wall (claim 5), and that the bottom wall has retaining means on its top surface near its outer free end (claims 6 and 7). Albracht, however, discloses in Figure 4B a gutter cover with a channel that is aligned with a panel (406) and the surface of the end wall (B) adjacent to the panel (406) forms the

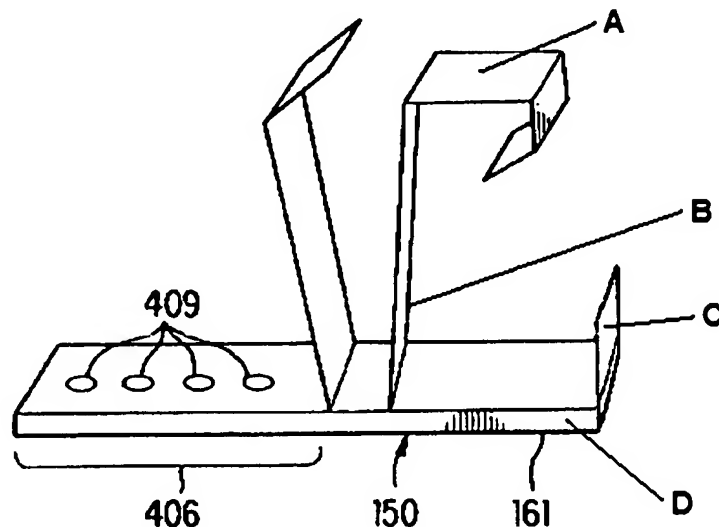
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gripping surface. Albracht also discloses a bottom wall (D) of the channel, that when measured, is shorter than the end wall (B), and the bottom wall has a restraining means (C) on its top surface near its outer free end. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to further modify Sweers' gutter cover, already modified by Hileman, by making the bottom wall of the channel aligned with the panel, the bottom wall of the channel shorter than the end wall, and have retaining means on the top surface of the bottom wall near its outer free end, as taught by Albracht to easily and securely attach to the lip of an installed gutter.

19. Claims 9, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweers in view of Albracht. Sweers teaches everything previously disclosed, but fails to teach that the bottom wall of the channel is aligned with the panel and the surface of the end wall adjacent the panel forms the gripping surface (claim 9), that the bottom wall is shorter than the end wall (claim 10), and that the bottom wall has retaining means on its top surface near its outer free end (claim 11). Albracht, however, discloses in Figure 4B a gutter cover that is aligned with a panel (406) and the surface of the end wall (B) adjacent to the panel (406) forms the gripping surface. Albracht also discloses a bottom wall (D) of the channel, that when measured, is shorter than the end wall (B), and the bottom wall has a restraining means (C) on its top surface near its outer free end. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention modify Sweers' gutter cover, by making the bottom wall of the channel aligned with the panel, the bottom wall of the channel shorter than the end

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wall, and have retaining means on the top surface of the bottom wall near its outer free end, as taught by Albracht to easily and securely attach to the lip of an installed gutter.



Albracht (US Patent Number 6701674) Figure 4B

20. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sweers in view of Brochu (US Patent Number 6427388). Sweers discloses everything previously mentioned including the top wall (30) of the channel aligned with the main panel (24), but does not teach a support wall extending upwardly from the panel or top wall to provide the gripping surface. Brochu, however, teaches a raised portion of a gutter cover that has an inner and outer vertical wall (Figure 2, Items 52 and 54). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to modify Sweers' gutter cover to include a vertically extending wall, as

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taught by Brochu to provide a gripping surface making it easier to install the gutter cover over the lip of the gutter.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sullivan et al. (US Patent Number 2209741) discloses a roofing gutter guard with transversely extending supporting members. Killworth et al. (US Patent Number 5848857) discloses a gutter shield with a porous screen and a side section with a channel opening away from the main section. Sweers (US Patent Number 4941299) discloses a gutter screen with abutment ribs. Jacobs (US Patent Number 5398464) discloses a gutter system with a screen and a strap for supporting the gutter. Albracht (US Patent Number 5557891) discloses a gutter protection system with channels on its side ends. Iannelli (US Patent Number 6367743) discloses a gutter cover with channels on its side ends. Serano (US Patent Number 6493993) discloses a gutter protector that fits independently into a gutter without fasteners.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Devoti whose telephone number is 571-272-2733. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PD *PD*
11/22/05

LANNA MAI
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